

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

08/26/2002

CLERK OF THE COURT  
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza  
Deputy

CV 2002-005761

FILED: \_\_\_\_\_

CLAUDE L WINTERS

WILLIAM W HOLDER

v.

STATE OF ARIZONA BOARD OF  
EDUCATION

JENNIFER ANNE POLLOCK

REMAND DESK CV-CCC  
STATE OF ARIZONA BOARD OF  
EDUCATION  
1535 W WASHINGTON ST  
PHOENIX AZ 85007

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions:

The Superior Court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under the Administrative Review Act places the burden upon the Petitioner to demonstrate that the hearing officer's decision was arbitrary, capricious, or involved an abuse of discretion.<sup>1</sup> The reviewing court may not substitute its own discretion for that

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<sup>1</sup> *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977);  
*Klomp v. Ariz. Dept. of Economic Security*, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

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exercised by the hearing officer,<sup>2</sup> but must only determine if there is any competent evidence to sustain the decision.<sup>3</sup>

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings, exhibits made of record and the memoranda submitted.

The first issue is whether the Arizona State Board of Education (the "Board") and the Professional Practices Advisory Committee (PPAC) committed error by considering evidence of three incidents in which Petitioner was not charged with any criminal offense. Respondent correctly argues that the Board may take action against a teacher's certificate for any conduct that evidences immoral or unprofessional conduct by the teacher.<sup>4</sup> The present charges, by their very nature, clearly involve unprofessional conduct. In Brown v. Arizona Dept. of Real Estate<sup>5</sup> the court ruled that otherwise inadmissible evidence may be considered at administrative hearings, may be given probative weight, and in some circumstances, may even be the sole support of an administrative decision. Decisions in administrative proceedings may be sustained on circumstantial evidence alone.<sup>6</sup>

Further, A.R.S. § 41-1062(a)(1) states in part:

A[n] [administrative] hearing may be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Neither the manner of conducting the hearing nor the failure to adhere to the rules of evidence required in judicial proceedings shall be grounds for reversing any administrative decision or order

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<sup>2</sup> Ariz. Dept. of Economic Security v. Lidback, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

<sup>3</sup> Schade v. Arizona State Retirement System, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); Welsh v. Arizona State Board of Accountancy, 14 Ariz. App. 432, 484 P.2d 201 (1971).

<sup>4</sup> A.R.S. §15-203(a)(20).

<sup>5</sup> 181 Ariz. 320, 890 P.2d 615 (App. Div.1 1995); See Begay v. Arizona Dept. of Economic Sec. 128 Ariz. 407, 626 P.2d 137 (App. Div.1 1981).

<sup>6</sup> Justice v. City of Casa Grande, 116 Ariz. 66, 567 P.2d 1195 (App. Div.2 1977).

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providing the evidence supporting such  
decision or order is substantial, reliable,  
and probative.

Consequently, neither the Board nor the PPAC committed error by  
admitting evidence of the three incidents.

The second issue is whether Petitioner's conduct had  
sufficient connection with the operation of a school to support  
the revocation of his teaching certification, given his  
convictions of aggravated harassment, disorderly conduct  
involving the discharge of a weapon, and his history of  
disorderly conduct and harassment of neighbors - including  
children - and a former student. Only where the administrative  
decision is unsupported by competent evidence may the Superior  
Court set it aside as being arbitrary and capricious.<sup>7</sup> Here, the  
record is replete with competent evidence supporting the Board's  
decision; the Petitioner's course of conduct is intolerable and  
unbecoming of a teacher. In determining whether an  
administrative agency has abused its discretion, a reviewing  
court must review the record to determine whether there has  
been:

...unreasoning action, without  
consideration and in disregard for facts  
and circumstances; where there is room for  
two opinions, the action is not arbitrary  
or capricious if exercised honestly and  
upon due consideration, even though it may  
be believed that an erroneous conclusion has  
been reached.<sup>8</sup>

After a careful review of the record this court finds that  
the Board's decision was not contrary to law, nor was it  
arbitrary, capricious, or an abuse of discretion.

IT IS THEREFORE ORDERED affirming the decision of the  
Arizona State Board of Education.

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<sup>7</sup>*City of Tucson v. Mills*, 114 Ariz. 107, 559 P.2d 663 (App. 1976).

<sup>8</sup>*Tucson Public Schools, District No. 1 of Pima County v. Green*, 17 Ariz.App. 91, 94, 495 P.2d 861, 864  
(1972), as cited by *Petras v. Arizona State Liquor Board*, 129 Ariz. 449, 452, 631 P.2d 1107, 1110 (App.  
1981);

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IT IS FURTHER ORDERED remanding this case back for all further and future proceedings to the Arizona State Board of Education.

/S/ HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT